

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

LAWRENCE J. KONCELIK JR.,

Lead Plaintiff,

v.

SAVIENT PHARMACEUTICALS, INC.,  
CHRISTOPHER G. CLEMENT,  
ZEBULUN, and D. HOROWITZ,

Defendants.

**Civil Action No. 08-cv-10262 (GEL)**

**DECLARATION OF MARC I. GROSS  
IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR  
PARTIAL LIFTING OF THE DISCOVERY STAY**

I, Marc I. Gross, under penalty of perjury, hereby declare:

1. I am a partner at Pomerantz Haudek Grossman & Gross LLP, Plaintiff's Lead Counsel in this litigation. I submit this declaration in support of Lead Plaintiff's Motion For Partial Lifting of the Discovery Stay. I have personal knowledge of the contents of this declaration, and if called, would testify competently thereto.

2. During the week of May 11, 2009, I conferred with counsel for the Defendants in the above-captioned matter regarding Plaintiff's Motion For Partial Lifting of the Discovery Stay in order to serve document preservation subpoenas on certain third party companies with whom Savient Pharmaceuticals, Inc. ("Savient") shared data relevant to this litigation.

3. Defendants responded that they intend to oppose Lead Plaintiff's motion on the grounds that: 1) Savient has an "exhaustive record" of what it shared with third party companies; 2) any internal memoranda prepared by third party companies reflecting their analysis of the data and their decision not to proceed with a joint venture with Savient was "not probative" of the issues in this case; 3) the subpoenas could be prejudicial to the extent that Savient is having continued discussions with some of these companies; and 4) the subpoena is otherwise overbroad.

4. As Lead Plaintiff's motion seeks only preservation, not production, Defendants' first three objections are premature. Regarding the contention that the subpoena is otherwise overbroad, the parties can presumably work out the scope of the request, but will first await determination by the court that a partial lifting of the stay is warranted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 13, 2009  
New York, New York

Respectfully submitted,

**POMERANTZ HAUDEK  
GROSSMAN & GROSS LLP**

/s/ Marc I. Gross

Marc I. Gross

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